

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AIR PRODUCTS LLC,

Plaintiff,

vs.

CIECH, S.A.,

Defendant.

Case No. 5:12-cv-6953-JKG

DEFENDANT’S MOTION FOR LEAVE TO FILE SEALED REPLY
MEMORANDUM

Pursuant to the Court’s order of April 29, 2013 (Doc. No. 38), Defendant respectfully requests that the Court permit the filing under seal of the Proposed Reply Memorandum of Law in Support of Defendant’s Motion to Dismiss, dated June 7, 2013.

At the time of the filing of this motion, counsel for Plaintiff does not consent to the filing of any reply brief. This marks a change in Plaintiff’s position on the issue from an agreement that the parties reached on March 26, 2013. On that date, counsel for Ciech asked Plaintiff’s counsel to “memorialize [the parties’] understanding that, in the event Ciech files a motion to dismiss, Air Products would consent to Ciech having a 15-page Reply brief.” Later the same day, counsel for Plaintiff sent the following response: “That was our position, subject to [Plaintiff] also being permitted a 35-page opposition.” Consistent with this understanding, Ciech did not oppose Plaintiff’s filing an opposition of up to thirty-five pages. Plaintiff has subsequently changed its position, and it now states that it does not consent to Ciech’s filing a reply brief.

Given the nature of Plaintiff's opposition brief—which mischaracterizes the law and the claims at issue, raises a number of legal issues not addressed in Defendant's memorandum in support of its motion to dismiss, and relies on expert opinions concerning Polish law and proceedings that require some response—the filing of Defendant's proposed reply brief would aid the Court's determination of this case. Ciech therefore respectfully requests that the Court grant leave for the filing of the proposed brief. *See, e.g., Ney v. Open Solutions, Inc.*, No. CIV.A.06-CV-4354, 2007 WL 3377239, at *1 (E.D. Pa. Nov. 8, 2007) (Gardner, J.) (granting leave to file reply brief upon determination that the brief would “be helpful to the determination of the issues presented in this case” and that it was “responsive to arguments raised for the first time in plaintiff's opposition papers and helpful in understanding the respective positions of the parties”); *McNiff v. Asset Mgmt. Specialists, Inc.*, 337 F. Supp. 2d 685, 688 n.1 (E.D. Pa. 2004) (Gardner J.) (considering reply brief even when defendants had failed to seek leave to file it, on the basis that it would be “helpful to [the Court's] determination of the issues”).

Ciech respectfully requests that the Court permit it to file a brief in excess of the typical seven pages. In the light of the issues presented, the parties initially agreed that the opening brief and opposition required more than the typical 25 pages, and the Court approved their stipulation permitting briefs of 35 pages on both sides. As noted, Plaintiff previously agreed to a reply brief of 15 pages, presumably on the same understanding. Plaintiff's 33-page opposition, supported by three witness declarations, occasions the need for a 15-page reply.

Finally, as noted in Plaintiff's and Defendant's prior motions for leave to file sealed documents, the contract at issue prohibits the disclosure of certain confidential

business information referred to in the Memorandum. As before, Defendant does not consider the majority of the Memorandum to be confidential but wishes to afford Plaintiff the opportunity to object to the public disclosure of any portions of the Memorandum. As with prior filings, and pursuant to Local Civil Rules 5.1.2 and 5.1.5, Defendant has filed with the Clerk of Court a hard copy of the Memorandum and respectfully asks the Court to seal it temporarily until Plaintiff and Defendant have conferred as to appropriate redactions. Defendant will then file the redacted version on the Court's public docket. Counsel for Plaintiff agrees with this manner of proceeding as to the issue of sealing and does not oppose this motion to the extent that it seeks the sealing of any reply brief the Court permits to be filed.

June 7, 2013

Respectfully submitted,

WILMER, CUTLER, PICKERING,
HALE and DORR LLP

/s/ David Ogden

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ORDER

NOW, this _____ day of June, 2013, upon consideration of Defendant's Motion for Leave to File Sealed Reply Brief, filed June 7, 2013, and the response thereto,

IT IS ORDERED that the motion is granted. The Clerk shall file under seal the Proposed Reply Memorandum of Law in Support of Defendant's Motion to Dismiss.

James Knoll Gardner
United States District Judge